1949.

File No. S. Dur 2/49

Legal Department

A BRANCH

Subject:— Civil Suit No. 254 of 1947

1) Mrs Khatizabai alias Bibijan kom Abdul Majid Shaikh } Plff

VS

1) The Province of Bombay } Defts.

claim Rs. 65/—

1) CY-RE

Re. For a declaration that the order of the commissioner, Southern Division, No. L.N.D.A.P. 1475, dated the 28th August 1947, cancelling the grant of the suit land made by the collector of Dharwar to the plaintiff illegal and ultra vires and for a permanent injunction restraining Governme from enforcing that order.

File No. S. Dur. 2/49 S. Dur 2/49

Gen.104—W 3—1,000—6/48—A.

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L.C.Suit No.254 of 1947.

In the Court of the Civil-Judge, Senior Division, Hubli.

Plaintiff :- Khatizabi alias Bibijan kom Abdul - Majid Shaikh, age , caste Muslim, occupation agriculturist of Hommardi, now at Dharwar.

Vs.

Defendant :- The Province of Bombay.

Claim Rs.65/-.

1. The suit is fixed for framing of issues - on 8-11-1948.

2. Notice under Section 80 of the Civil - Procedure Code has been given, it has been received by the Collector of Dharwar on 23-10-1948.

3. The suit has been instituted by the plff to declare the order of the Commissioner S.D., Belgaum passed on 28-8-1947 against the plaintiff to be ultra vires, null and void and not binding on the plaintiff - and she has obtained an interim injunction against the Government not to auction the occupancy right of the plaintiff.

4. The Commissioner's order No.L.N.D.A.P.1475 dated 28-8-1947 purports to cancel the order of the

Collector, under Section 211 of the Land Revenue Code.

5. The Collector of Dharwar by his order No.L.G.R.S.R.867 dated 4-10-1945 had granted the land R. S.No. 329, 21 acres and 37 gunthas of Hommardi village in Haveri Taluka to the plff on restricted tenure on - payment of Rs.222/-. The R.S.No.329 is the bed of a tank, which is not repaired for the last 30 years or so. The tank was an irrigation tank and was suffering supplying water to about 30 S.Nos. below the tank.

6. The tank was not kept under repairs by the owners of the lands below for about 30 years and the use of the tank is being neglected by them. However they say that they want to get it repaired and make full use of the tank. They are opposed to granting of the same to the plff for agricultural purpose. They have applied to the Revenue Officers to that effect.

7. The plff had originally taken it on one year's lease from the Government in 1942 when the - 'Grow more food campaign ' was in vague. She had passed a kabulayat for one year. She continued to hold the - same on yearly tenancy basis by executing yearly - kabulayats till 1944.

8. On 5-11-1944 the plff's husband applied to the Collector to grant the S.No.329 - permanently to the plff, as she had spent about Rs.1500/- over the repairs of the land from 1942 onwards and as the tank had fallen into utter disrepairs and was - abandoned . (application is at page 87 in the case papers).

9. The application was sent by the

Collector to the subordinate Revenue Officers for inquiry and report. They inquired and reported that it was advisible to abandon the tank, as it would - cost a big amount for repairs, on going through the report the Collector of Dharwar has ~~was~~ passed this order.

10. But the Commissioner S.D. under Section 211 of the L.R.Code has cancelled the order on the ground that the public of the village is against the - granting and that the Collector has not put it to auction sale etc.

11. The Commissioner's order was appealed - against and the Revenue Tribunal has up-held the - order of the Commissioner S.D. and has dismissed the appeal on 27th September 1947.

12. The Government should defend the suit as the order of the Commissioner is quite legal and - inconformity with the provisions of Section 211 of the L.R.Code.

The orders of the Collector, Commissioner and Revenue Tribunal are in the case papers at pages - 129- 169, and 171 respectively.

I have prepared the draft written - statement and objections which are enclosed herewith along with the case papers. The same may be sanctioned with necessary ~~max~~ amendments if any and sent along with the case papers back to me, as early as possible as the case is pending since a long time.

Hubli.
18-10-1948)

Yours Faithfully,
B.R.Mathad
Off-Sg.P.

From :- B.R. Mathad BA&LB. D.no 103/48
Sub Government Pleader Hubli.

To, The Collector of Dharwar

Subject :- L.C. suit no 254/47 of Hubli Court-

Sir,

In the case papers sent to me in the above suit, the order of the Commissioner S.D. and the order of the Revenue Tribunal are not found. They are the two important orders on which the suit is based. Hence I request you to send them immediately. The matter is being delayed for a long time. I cannot prepare the draft-writte statement without looking into the orders. Please treat this matter as very urgent-

Hoping that my request will be immediately complied with, I remain yours faithfully.

29-9-48. B.K. Mathad SGP.

The matter is fixed for ex parte hearing on 13-10-1948. I will have to prefer the written statement before that date & apply for setting aside the ex parte order. Hence the two orders may please be sent immediately. I have herewith attached your letter no d. A. W. --- dated 17-9-48 for ready reference.

29-9-48. yours faithfully B.K. Mathad SGP.

1 OCT1948
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Below letter No 103/48 dated 29.9.48 from the Sub. Govt Pleader, Hubli.

No LAW
Dharwar 4-10-1948

Returned w/cs.

2) The copies of the orders of the Commissioner S.D., Belgaum and of the Bombay Revenue Tribunal are enclosed herewith as desired

Read on 5-10-1948

for Collector Dharwar

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89

L.C.Suit No. 254 of 1947.

In the court of the Civil Judge,
Senior Division, Hubli.

Plaintiff :- Mrs. Khatizabi alias Bibijan kom Abdul Majid Shaikh, age , caste Muslim, occupation agriculturist of Honmardi, now at Dharwar.

Vs.

Defendant :- The Province of Bombay.

Claim Rs.65/-.

In this the officiating Sub-Government pleader,Hubli, begs to put in the following application for setting aside the exparte order.

The suit is fixed for exparte hearing today. The deft being the Province of Bombay will be put to loss and trouble and injustice will be caused if the suit is heard exparte. The suit relates to the setting aside the order of the Commissioner Southern Division. The papers relating to the proceedings were to pass through two offices and there was delay in getting the papers and gathering information to file written statement and objections in the case. Before filing W.S. and objections in the case of the Governmen the pleader will have to refer the matter to the higher authorities concerned in the matter and get orders and

directions from them, due to heavy work in the Revenue Department, the papers and instructions are received by me recently i.e. on 23-9-1948 and on 5-10-1948. Hence I could not prepare and file the written statement and objections earlier. The delay may be excused.

Today I have filed the objections and the written statement. The exparte order passed against me the Government may be set aside and the written statement and objections may be accepted inthe case and the suit may be proceeded with in the regular course.

13-10-1948)

I, B.R.Mathad, the officiating - Sub-Government pleader, Hubli, do hereby state on solemn affirmation that what is stated above is true to the best of my information and I believe the same to be true.

13-10-1948)

25 27/11

L.C.Suit No.254 of 1947.

In the Court of the Civil Judge, (Junior) Division,
At Hubli.

Plaintiff :- Mrs.Khatizabi alias Bibijan kom Abdul Majid Shaikh, age caste Muslim, occupation agricultur[illegible] of Hommardi, now at Dharwar.

Vs.

Defendant :- The Province of Bombay.

Claim Rs.65/-.

In this the written statement and objection of the defendant are as follows :-

1. Plff's suit is false and not tenable i law.

2. The contents of paras 1 to 13 of the - plaint are not admitted by this defendant.

3. The notice given by the plff to the Collector is not in accordance with Section 80 of the Civil Procedure Code and the contents are not admitte by this deft.

4. The notice given by the plff is - premature, and a suit brught on the strength of such notice is not tenable in law.

5. If the notice is construed to be in time then the suit is barred by Revenue Jurisdicti

Act.

6. This court has no jurisdiction to entertain this suit.

7. The order of the Commissioner and the Revenue Tribunal are perfectly valid and legal under Section 211 of the L.R.Code.

8. The Collector was not right in granting the property to the plff, in contravention of the standing orders of the Government. He ought to have put it to public auction, if at all he wanted to do so.

9. The price of Rs.222/- is too inediquate for the suit land, it is very much less than the normal value.

10. The Collector had no power to grant the property to the plff by stopping the water supply against the will of the villagers of Honmardi who strongly objected for the grant. It is the Canal officer who coul stop or change the nature of the water supply, without his consent, the Collector had no power to grant.

11. The property being an irrigation tank meant for the benefit of the land owners below the tank, their consent was a necessary element in granting the same, since they had right to take water from the tank to irrigate their lands, until they resigned their interest. About 30 S.Nos. are watered by this tank.

12. It is not a fact that the Tank was not being used as such for the last 40 years as alleged by the plff in para 1 of the plaint.

13. It is not admitted that the plff had spent a large amount over the land when she cultivated

the same under 'grow more food campain.'

14. It is not admitted that the necessary legal notices were issued before converting the tank into an agricultural land by the Government. If there were any notices issued, they were not legal and valid - according to the L.R.Code and the Bombay Irrigation Act.

15. The plff is not making wahiwat of the land as full owner. His ownership over the suit - property is denied by this defendant.

16. The allegations in para 5 (a) (b) (c) and (d) of the plaint are not correct. Section 211 of the L.R.Code is fully applicable to the facts of the case. The Collector has never entered into an - agreement with the plff, but he has passed an order at the request of the plff. This is not a case of completed agreement at all.

17. Plff has no cause of action for this suit. A suit of this nature cannot lie to this court.

18. Plff is not entitled to any of the - reliefs claimed by her.

19. The deft may be permitted to delete or ~~to~~ add or amend the written statement whenever - found necessary.

For the above mentioned reasons the - plaintiff's suit be dismissed with costs and the - interim injunction be vacated.

Hubli.
13 -10-1948)

I, B.R.Mathad, officiating Sub-Government pleader of Hubli, do hereby state on solemn affirmation that ~~that~~ the contents of paras 1 to 19 of the above written statement are true to the best of my information and I believe the same to be true.

BRM.

Hubli
) -10-1948

I.D.

Hubli Civil Suit No. 254 of 1947.

In this case the Collector granted a land to the plaintiff under Rule 37 of the Land Revenue Rules. As the grant was made without holding public auction the Commissioner cancelled the grant under section 211 of the Land Revenue Code. The plaintiff has therefore gone to Court.

The defence of the suit may be sanctioned on the lines of the appended brief.

RECEIVED IN REVENUE DEPARTMENT

Received on 4-12-1947.
Registered on Do.
Decided on 17- -1948.
Duration : 1 year, 2 months and 13 days.

In the Court of the Civil Judge, Senior Division,
At Dharwar. Ex.27.

L.C.S. No.254 of 1947.

Mrs. Khatijabi alias Bibijan Kom Abdulmajid Shaikh, 24, Muslim, agriculturist of Homardi now at Dharwar.
..... Plaintiff.

against.

The Province of Bombay..... Defendant.

Claim Rs.65/-/- for both purposes.

The plaintiff has filed this suit for a declaration that the order of the Commissioner S.D. dated 20th August 1947 is ultra vires and not binding on her and an injunction against the defendant from carrying into effect that order. The facts are that S.No.216 of Homardi village was granted to the plaintiff by the Collector on condition that she paid Rs.220/- as occupancy price and Rs.2/- as value of a tree standing on the land. This land is a bed of a tank. The villagers objected to the grant on the ground that they had a right to take water from the tank to irrigate their lands. Therefore the Commissioner S.D. set aside the Collector's order purporting to act under section 211 of the Land Revenue Code as it contravened certain standing orders of the Government. This order of the Commissioner the plaintiff alleges, is unjust and ultra vires and therefore is a nullity and is not binding on the plaintiff. The plaintiff was given no opportunity by the Commissioner to defend the Collectors order. She preferred an appeal to the Revenue Tribunal against the order of the Commissioner. But her appeal

was dismissed for want of jurisdiction on the ground that the Commissioner has merely carried out the orders of Government and therefore the appeal being against an order made by the Government they had no jurisdiction to interfere with such an order.

The defendant by their written statement, Ex.19, have raised several objections to the plaintiff's suit. They contend that the notice given by the plaintiff to the Collector is not in accordance with section 80 of the Civil Proceedure Code and that the notice is premature and a suit brought on the strength of such a notice is not tenable in law. This contention was therefore taken up as a preliminary issue; namely;

> Whether the notice given under section 80 C.P.C. to defendant on 22--1947 is legal and valid ?

My finding in this issue is in the negative and for the following reasons.

It is true that the plaint alleges that notice as required by law has been given by registered post to the Collector of Dharwar as required by section 80 of the Civil Proceedure Code. But there are other conditions which must be fulfilled before the notice of the intended suit can be said to be legal and valid. Section 80 says that the notice of the intended suit when delivered to a public office "must state the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims". It is not disputed that the defendant has received the notice under section 80 C.P.C. That notice along with a covering letter from her pleader has been produced by the defendant, at serial No.1 with Ex.22. When that notice was sent to the Collector, the plaintiff's appeal to the Revenue Tribunal against the order of the Commissioner was still pending and had not been decided. Therefore, in his covering letter with which was attached a draft of the plaint, the plaintiff's

4/9/19

pleader stated that " if before the filing of the suit an adverse decision is given by the said Tribunal, necessary changes will be made in the suit and the prayer will be for a declaration that the order of the Revenue Tribunal is ultra vires and for a consequential injunction. If the Revenue Tribunal decides in my client's favour, no suit would be filed". And by the the time the suit was filed , her appeal was dismissed and therefore a fresh para was added to the plaint, which is para 7, wherein it is alleged that " plaintiff preferred an appeal to the Revenue Tribunal against the order of the Commissioner, but the appeal has been dismissed for want of jurisdiction on the ground that the Commissioner was clearly carrying out the orders of the Government ". The prayer clause also had therefore to be altered but curiously enough it was not done. Though by the time this was filed, the Revenue Tribunal had dismissed the appeal and therefore, it was necessary for the plaintiff to seek a declaration that that the order of the Commissioner and the order of the dismissal of the plaintiff's appeal against that order of the Commissioner were ultra vires and not binding upon her, the plaint as it now stands purports only to seek a declaration that the Commissioner's order is ultra vires. So then, what is the plaintiff's grievance ? Her grievance is that the Collector's order by which she was granted a bed of a tank was correct but that the Commissioner's order setting aside that order of the Collector and the dismissal of her appeal by the Revenue Tribunal against the order of the Commissioner are not legal and valid and therefore are not binding upon her. Therefore, the relief which she claims in the suit is the setting aside of the Commissioner's order and the order of the Revenue Tribunal on the ground that they are ultra vires

therefore not binding upon her. But the plaintiff's notice of the intended suit purports to seek a relief against the order of the Commissioner alone. Therefore the relief which the plaintiff claims in her notice is not the one that is now claimed in the suit. The two reliefs are quite different. The cause of action for t intended suit is stated to have arisen in the 1st week of September 1947 when the order of the Commissioner was received by the plaintiff. The same is repeated in the plaint. But the cause of action could not have arisen in Sept. 1947; it arose on 11th October 1947 when the Revenue - Tribunal confirmed the Commissioner's order and dismissed the plaintiff's appeal. Therefore the cause of action also, is not correctly stated in the notice. The plaintiff's notice given to defendant under section 80 Civil Proceedure Code is therefore clearly premature and so, it is bad in law, as it does not fulfil the conditions required by the section. It was however urged on behalf of the plaintiff that the plaintiff's notice cannot be said to be bad - because it refers to a possible further relief, which may arise before a suit can be brought, when as a fact a cause of action did exist when the notice was given, and in support of this contention, the authority of Chandlal Vadilal vs. Government of the Province of Bombay, 45 B.L.R. 197 is relied upon. In my opinion this contention cannot be accepted and the decision relied upon by the plaitiff has no application at all to the facts of the present case. In the 45 Bombay Law Reporter case, the facts were, in 1938, the Collector fixed assessment on the plaintiff's land at a certain rate and later, issued notices to plffs demanding payment in accordance with the assessment. The plaintiffs alleged that the assessment was illegal and so, they gave notice in January 1934 under section 80 Civil Proceedure Code that the order was ultra vires and opposed to law and therefore, they would bring a suit for declaration and also for the refund of any amount that the -

Collector would levy from them. Later in February, the plaintiffs paid the amount assessed under protest and in July, they brought a suit for the refund of the amoutn. The trial Judge held that the notice was bad on the ground that the notice must state the relief to which the plaintiff becomes entitled to claim on the date of the notice and not a relief which he may be entitled to claim in future on the happening of certain contingencies. On appeal, Their Lordships of the High Court held that the notice was not bad simply because it refers to a possible further claim consequential upon the same cause of action which may arise before a suit can be filed. But this is not a case where when the plaintiff gave the notice it referred to a possible further claim or additional claim consequential upon the same cause of action. In her notice, the plaintiff claims a relief against the Commissioner's order. In the suit she necessarily claims a relief not only against the Commissioner's order but the order of the Revenue Tribunal also. Therefore, a possible further claim to which a reference is made in the notice cannot be said to arise and does not arise from the same cause of action. The one is distinct from the other. Therefore, the decision relied upon by the plaintiff is irrelevant and it cannot avail her. The cause of action has arisen to plaintiff on 15th October 1947, when the Revenue Tribunal passed an order dismissing her appeal. But the plaintiff has given the notice even before the cause of action arose. Therefore, the plaintiff's notice is invalid in view of the decision in Kessoram Vs. Secretary of State, (1933) 54 Calcutta 968.

There is another defect in the plaintiff's notice. In the draft of the plaint which has been attached to the covering letter, the plaintiff's age is not given and also her place of residence, which

according to section 80 as necessary to state in the notice. In some cases a libereal construction was put upon this section and it was held that a notice was sufficient if it substantially fulfilled its object in informing the party concerned of the nature of the suit to be filed. But Sir, D.F. Mulla say in his commentary that since the Privy Council judgement in Bhagachand Vs. Secretary of State, 54 Indian Appeals, 338, strict compliance with the terms of the section has been enforced. Therefore, the section being mandatory, every condition laid down in that section must be fulfilled before the notice of the intended suit can be said to be legal and valid. Therefore, the absence of any mention of th age of the plaintiff and her place of residence in her notice renders it bad in law. Hence my finding on the preliminary issue in the negative.

Therefore, pass the following order.

Order.

Plaintiff's suit is dismissed with costs, and plaintiff to bear the defendant's costs.

17-2-1940. Sd/- [illegible]
Civil Judge, S. .

(Seal) " True Co
Sd/- X.X. Soudagar,
Clerk of the Court.

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D e c r e e.

In the Court of the Civil Judge, Senior Divisin Hubli, At Hubli.

Long Cause Civil Suit No.254 of 1947, Ex.28.

Plaintiff :- Mrs. Khatizabi alias Bibijan kom Abdul Majid Shaikh, age 24, Carte Muslim, occ. agriculture, Hommaradi now at Dharwar.

Vs.

Defendant :-The Province of Bombay.

Presented on 4th December 194'

Filed on 4th December 1947.

Claim Rs.65/- for all purposes.

The plaintiff abovenamed begs to state and submit as follows :-

The property to which the suit relates is R.S. No.329 measuring 2= acres 3' gunthas, assessed at Rs. 18/-, situate in the village Hommaradi, Taluka Karjgi, District Dharwar.

The aforesaid land, R.S.No.329, was formerly an irrigation tank, but for about 4' years or so, it was not being used as a tank, and was of no use to the villagers. In 1942, under the pressing need of War, the "Grow More Food" Campaign was inagurated by Government and in response to that call, plaintiff offered to bring the R.S.No.329 under cultivation, if the authorities were pleased to lease out the said land to her. Accordingly, it was agreed to and plaintiff cultivated the said land on lease. She had to spend a large amount for bringing it under cultivation. In view of the fact that the aforesaid land was being put to much better use as cultivable land than as a tank, in 1944, the Government authorities moved in the matter, and after ascertaining the views of the villagers, took the necessary steps to

remove the said R.S.No.32 from the list of irrigation tanks, and convert it into ordinary Government waste land. The necessary notifications were issued by Government in this behalf and published in the Bombay Government Gazette, T said Survey Number was ~~accordingly~~ accordingly converted with ordinaryGovernment land.

Thereafter, the Collector of Dharwar, taking into consideration the fact that plaintiff was cultivating the suit land from the year 1942, and that she had spent a large amount over it, was pleased to grant it to plaintiff on restricted tenure on condition of plaintiff paying to Government Rs.220/- being the panch valuation of the land, and Rs.2/- for tree standing on the land. Plaintiff accepted the terms and ~~paid~~ paid the amount to Government and accordingly she executed an agreement in form F as given in the land Revenue Rules. The District Inspector of Land Records was requested to fix and he has already fixed the assessment of the land. Since then, plaintiff has been making wanivat of the land as full owner and occupant as per terms of the agreement.

Subsequently, it appears, some interested persons approached the authorities, but no notice of any enquiry or proceedings was ever given to the plaintiff. Ultimately an order has been received by the plaintiff No.L.N.D.Ap. 1435 dated 28-8-1947 passed by the Commissioner Southern Division, Belgaum. It purports to be under section 211 of the Land Revenue Code, and states that the grant made by the Collector, Dharwar, plaintiff contravenes certain standing orders of Government and also refers to the alleged objection by the villagers of Hommaradi, and purports to set aside the grant made by the Collector, Dharwar.

It is submitted that the order of the Commissioner Southern Division, Belgaum, is ultra vires and of no effect what-so-ever, It is highly irregular, inequitable and unjust.

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It is submitted that the aforesaid order is a nullity and not bindingon the plaintiff, on the following - among other grounds :-

Section 211 of the Land Revenue Code is inapplicable to the facts of the case. What the Collector did was not to pass an order, but he entered into an agreement, which he was perfectly competant to do under law, with the petitioner for the disposal of the land in question, on certain conditions and for a certain consideration, which were accepted by the petitioner. Petitioner has executed the necessary document embodying the terms of the agreement. This is, therefore, a case of a complicated agreement, and not of an order. The provisions of section 211 of the Land Revenue Code are applicable only in the case of order, and are altogether inapplicable in the case of concluded agreement.

The observation of the Commissioner that the Collector's order contravenes the standing orders of Government is erronious and unsound. No particular order or orders have been referred to. It is submitted that even assuming that there are any such - standing orders they are merely for guidance and are merely recommendatory and advisory. They are not and cannot be deemed to be mandatory and obligatory, and cannot over-ride the powers of the Collector, which have been conferred on him by statute.

The reference in the Commissioners order to alleged objection by the villagers of Hosaradi, is unwarranted by law. No objections should have been entertained behind the back of the plaintiff who - could not put forward her own case as against the alleged objection.

It is submitted that the Commissioner's order

is bad in law and null and void, as no notice was issued by the ~~Collector~~ Commissioner to the Plaintiff. It is a principle of natural justice, and recognised by all systems of jurisprudence that no adverse order can or ought to be passed against a party without notice to him, and without giving an opportunity of being heard in support of the case.

Plaintiff referred an appeal to the Revenue Tribunal against the order of the Commissioner, but the appeal has been dismissed for want of jurisdiction on the ground that the Commissioner was only carrying out the orders of Government. It is submitted that there was no order of Government which the Commissioner was bound to carry out. Even supposing that there was such an order, the said order of Government is also bad in law, and null and void for the reasons, among other, urged against the order of the Commissioner. Section 211 is inapplicable to the case, and the agreement entered into by the Collector under powers vested in him by statute could not be cancelled even by Government. Further, the procedure followed by Government in issuing a direction to the ~~Collector~~ Commissioner is contrary to the provisions of law and the principles of natural justice. No notice was given to the plaintiff and she had no opportunity of representing her case before Government. Hence it is submitted that the order of Govt. if any, being ultra vires, it could not confer any power on the Commissioner, where there was none conferred statute. Hence the Commissioner's order could not be and is not validate by the alleged direction of the Government.

It is submitted that for the aforesaid reasons among others, the order of the Commissioner and the order, if any, of Government are ultra vires and null and void. It appears that the Officers of the defendant Government proposed to carry into effect the orders of the Commissioner. Hence it has become necessary to file this suit for a declaration that the order of the Commissioner is a nullity

It is submitted that the aforesaid order is a nullity and not binding on the plaintiff, on the following - among other grounds :-

Section 211 of the Land Revenue Code is inapplicable to the facts of the case. What the - Collector did was not to pass an order, but he entered into an agreement, which he was perfectly competant to do under law, with the petitioner for the disposal of the land in question, on certain conditions and for a certain consideration, which were accepted by the petitioner. Petitioner has executed the necessary document embodying the terms of the agreement. This is, therefore, a case of a complicated agreement, and not of an order. The provisions of section 211 of the Land Revenue Code are applicable only in the case of order, and are altogether inapplicable in the case of concluded agreement.

The observation of the Commissioner that the Collector's order contravenes the standing orders of Government. is erronious and unsound. No particular order or orders have been referred to. It is submitted that even assuming that there are any such - standing orders that are merely for guidance and are merely recommendatory and advisory. They are not and cannot be deemed to be mandatory and obligatory, and cannot over-ride the powers of the Collector, which have been conferred on him by statute.

The reference in the Commissioners order to alleged objection by the villagers of Mo aradi, is unwarranted by law. No objections should have been entertained behind the back of the plaintiff who - could not put forward her own case as against the alleged objection.

It is submitted that the Commissioner's order

S/37/41

and is not binding on the plaintiff and for a consequential ~~xxixxf~~ injunction against defendant not to give effect to the aforesaid order.

The cause of action accrued in the first week of September 1947 when the order of the Commissioner was received by the plaintiff.

Notice as required by law has been given by Registered post to the Collector, Dharwar.

Since the law which is the subject matter of the order by the Commissioner is statute within the jurisdiction of this Court, the suit is filed in this Court.

The suit being for a declaration with consequential injunction, the minimun Court-fee of Rs.6/ 4/- is paid. For purpose of jurisdiction the suit is valued at Rs.65/-.

Plaintiff prays as follows:-

It should be declared that the order of the Commissioner, Southern Division, Belgaum, No,L.N.D. Apl. 1475 of 28-8-47 is ultra vires, and not binding on the plaintiff, and a consequential injunction be issued against defendant restraining them permanently from carrying into effect the aforesaid order.

All costs of suit be awarded.

All such other relief or reliefs as the plaintiff may be entitled to, in justice, law and equity may be awarded.

- - - x

This suit coming on this may 17th February 1949 before Mr.S.A.Bhoj, Civil Judge, Senior Division, Hubli, for final disposal in the presence of Messrs. V.G.Jamkhandi and R.V.Hotanahalli pleaders for plaintiff and [illegible] pleader for defendant. it is hel

ereby ordered and decreed as unde

Plaintiff's suit is dismissed with costs, and plaintiff do bear the defendant's costs.

Bill of Costs

Plaintiff's Costs		Defendant's Costs	
1. Stamp for plaint Ex.1.	6/ 4/-	1. Stamp for applications Exs 11 to 13 & 20 & 21	6/ 4/-
2. do for vakalatnama	-/10/-	2. Pleader's fees on Rs.65/- minimum	15/ -/-
3. do for applns Exs.7 and 25.	1/ 4/-		
4. Pleader's fees on Rs.65/- minimum.	15/ -/-		
5. Process fees Exs. 1 and 7.	8/ -/-		
6. Copying fees Ex.4.	-/11/-		
Total.	31/13/-	Total	21/ 4/-
Costs disallowed Ex.25.	-/10/-	Cost disallowed Ex.14 to 13,20 and 21	4/ 6/-
Balance.	31/ 3/-		16/14/-

Given under my hand and the seal of the Court this day the 17th February 1949.

(Seal) Sd/- [illegible],
Civil Judge, S.D.

" True Copy
Sd/- X.X.Soudagar,
Clerk of the Court.

Suits:

Dharwar.

For a declaration that the order of the Commissioner, Southern Division, No. L.N.D.A.P. 1475, dated the 28th August 1947, cancelling the grant of the suit land made by the Collector of Dharwar to the plaintiff is illegal and *ultra vires* and for a permanent injunction restraining Government from enforcing that order.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 2162.

Bombay Castle, 23rd February 1949.

Letter from the Collector of Dharwar, No. L.A.W., dated the 23rd October 1948—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), HUBLI.
CIVIL SUIT NO. 254 OF 1947.

Mrs. Khatizabai *alias* Bibijan *kom* Abdul Majid Shaikh ... Plaintiff;

versus

The Province of Bombay ... ... Defendant.

Claim—Rs. 65.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Memorandum to the Subordinate Government Pleader, Hubli, No. 286, dated the 10th January 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

G. R. No. 2162, L. D., dated the 23rd February 1949.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Dharwar,
The Secretary, Bombay Revenue Tribunal,
The Subordinate Government Pleader, Hubli (with two copies of the brief).

*With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

6/1 65 31

DHARWAR (HUBLI) CIVIL SUIT No. 254 of 1947.

Chronological Statement of Facts.

File p. 169.

The suit is for a declaration that the order of th Commissioner, Southern Division, No. L.N.D.A.P. 147 dated 28th August 1947, cancelling the grant of the suit land made by the Collector of Dharwar to the plaintiff is illegal and *ultra vires* and for a permanent injunction restraining Government from enforcing that order.

File p. 153.

2. Survey No. 329 of Hommardi, taluka Karajgi was granted by the Collector to the plaintiff on payment of occupancy price of Rs. 220 (*vide* Collector's order No. LGL.SR. 867, dated 4th October 1945.) The plaintiff executed a Kabulayat in Form F of the Land Revenue Rules.

3. As the land was disposed of by the Collector without holding public auction, the Commissioner by his order aforesaid, cancelled the grant under section 211 of the Land Revenue Code.

File p. 171.

4. The plaintiff appealed to the Bombay Revenue Tribunal who held that it had no jurisdiction to decide the appeal.

5. On 23rd September 1947, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and in December 1947 she filed the present suit in the Court of the Civil Judge, Senior Division, Hubli.

Grounds of Defence.

The plaintiff contends that the order of the Commissioner, Southern Division, cancelling the grant is illegal because (1) the Collector had entered into an agreement with the plaintiff which he was competent to do under law, (2) that agreement cannot be cancelled by the Commissioner under section 211 of the Land Revenue Code, (3) the orders of Government in pursuance of which the Commissioner cancelled the grant cannot override the statutory powers of the Collector and (4) the Commissioner did not give any notice to the plaintiff before passing his order.

2. There is no substance in any of the contentions of the plaintiff. The suit land belonged to Government whether Government land should or should not be granted to a private individual is a matter entirely within the discretion of the revenue officers. The Collector's order granting the land to the plaintiff did not create any right in plaintiff's favour. That order was passed under rule 37 of the Land Revenue Rules and was liable to be set aside by the Commissioner in exercise of the powers under section 211 of the Land Revenue Code. The plaintiff will probably rely upon the cases reported in 44 Bom.L.R. 405 and 46 Bom.L.R. 413 and contend that there was an agreement in the form of a Kabulayat between him and the Government and that agreement is not liable to be set aside under section 211. The argument is also of no substance. The Kabulayat in Form F is a unilateral document executed by the plaintiff alone and addressed to the Mamlatdar. It is neither a sanad nor an agreement nor is it executed by the Collector or any other officer on behalf of the Governor of Bombay. The cases reported in 44 Bom.L R. 405 and 46 Bom.L.R. 413 apply only to sanads and agreements of the latter class. The present case is similar to and is therefore more appropriately covered by the Privy Council's decision in Secretary of State *v.* Anant Nulkar, 36 Bom. L.R. 242. It was held in that case that under section 211 the Commissioner has very wide powers for revising, modifying or annulling the Collector's order even if that order happens to be a valid order. The amplitude of the Commissioner's powers has been explained by the Privy Council in that case. Consequently the Commissioner's order setting aside the grant is legal and *intra vires* under section 211. That section does not require that the Commissioner should give previous notice to the party concerned before taking action.

Suits:- E.S. 33 6/9

Dharwar.
For a declaration that the order of the Commissioner, Southern Division, No.L.N.D.A.P. 1975, dated the 28th August 1847, cancelling the grant of the suit land made by the Collector of Dharwar to the plaintiff is illegal and ultra vires and for a permanent injunction restraining Government from enforcing that order.

1475

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 14426
Bombay Castle, 12th Dec. 1949.

Read Government Resolution, Legal Department, No.2162 dated the 23rd February 1949.

Letter from the Sub Government Pleader, Hubli, No.32 dated the 14th April 1949 forwarding an uncertified copy of judgment and stating that the suit noted in the margin was decided by the Civil Judge Senior Division, Hubli on 17th February 1949 when the following order was passed :-

In the Court of The Civil Judge (Senior Division), Hubli.
Civil Suit No.254 of 1947.

Mrs.Khatizabai alias Bibijan kom Abdul Majid Shaikh ...Plaintiff;
versus
The Province of Bombay ... Defendant.

Claim Rs.65.

"Plaintiff's suit is dismissed with costs and plaintiff to bear the defendant's costs.

Letter from the District Government Pleader, Dharwar No.730 dated the 25th August 1949 stating that the plaintiff in the suit noted in the margin has filed an appeal No.170 of 1949 in the Court of the District Judge, Dharwar and requesting sanction to the defence of the appeal.

Letter from the Collector of Dharwar No.L.G.L.S.R.867 dated 16th September 1949 forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No.11014 dated 30th September 1949.

Resolution:- Sanction is accorded to the defence of the Civil Appeal No.170 of 1949 in the Court of the District Judge, Dharwar on the lines of the brief accompanying Governments Resolution, Legal Department No.2162 dated 23rd February 1949 and the favourable grounds contained in the judgment of the Civil Judge, Senior Division, Hubli dated the 17th February 1949.

P.T.O.

688

By order of the Governor of Bombay,

Original sd/- R. M. Mehta,

Assistant Secretary to Government.

To

The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The Secretary Bombay Revenue Tribunal,
The District Government Pleader, Dharwar.

S.F.M.
7/11/49

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5 Encl (New file)

Suits:
Dharwar.
For a declaration that the order of the Commissioner, Southern Division, No.L.N.D.A.P.1475, dated the 28th August 1947, cancelling the grant of the suit land made by the Collector of Dharwar to the plaintiff as illegal and ultra vires and for a permananent injunction restraining Government from enforcing that order.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No.4824
Bombay Castle, 8th April 1950.

Read Government Resolution, Legal Department, No.2162, dated the 23rd February 1949.

Letter from the sub Government Pleader, Hubli, No.32, dated the 14th April 1949, forwarding uncertified copy of judgment and decree and stating that the suit noted in the margin was decided by the Civil Judge Senior Division, Hubli, on 17th February 1949, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Hubli.

Civil Suit No.254 of 1947.

Mrs.Khatizabai alias Bibijan kom Abdul Majid Shaikh ..... Plaintiff;
Vs.
The Province of Bombay. ..... Defendant.
.....Claim.Rs.65.....

"Plaintiff's suit is dismissed with costs and plaintiff to bear the defendant's costs."

RESOLUTION :- The result of the suit is recorded.

By order of the Governor of Bombay,

original R.M.Mehta

R.M.MEHTA.
Assistant Secretary to Government.

Issued on 8/4

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The Secretary, Bombay Revenue Tribunal.

Submitted for sign
8/4

Sent after work
file in D.D.R. 2/4.9.
Ref
10/4

Received on 4-4-1949. 37 83

Registered on 12-4-1949.

Decided on 26-2-1951.

Duration One year, Ten months and 12 days.

In the Court of the District Judge, Dharwar,
At Dharwar.

Civil Appeal No.170 of 1949
from decree in L.C.Suit No.254 of 1947 of the Court of the Civil Judge, Senior Division, Hubli. (Shri.S.M.Bhoj).

Exh. No.13.

Pleaders :-

Shri.V.G.Jamkhandi. — Khatizabi alias Bibijan Kom Abdul Majid Shaikh of Hommardi, now at Dharwar - Appellant (original plff).

Versus.

Shri.R.V.Jathar, (Asstt Govt Pleader). — The Province of Bombay - Respondent (Original defendant).

Claim Rs.

Judgment.

This is an appeal against the judgment of the Civil Judge, Senior Division, Hubli, dismissing with costs the plaintiff's suit against the Province of Bombay on the ground that the requisite notice under section 80, C.P.C was not given and that notice which was given to the defendant on 23-9-1947 under section 80 C.P.C. was not legal and valid.

2. It is necessaru to state few facts. A certain land had been granted to the plaintiff by the Collector but this grant was set aside by the Commissioner on th 28th of August 1947. Thereupon the plaintiff gave a

notice under section 80 C.P.C. to the Collector and the Collector acknowledged this notice on 23-10-1947. But before the suit was filed an appeal to the Revenue Tribunal was dismissed.

3. The reasons given by the Lower Court for holding that the ~~lower Court~~ notice given under section 80 C.P.C. to the defendant on 23-9-1947 was not legal and valid are (1) that the age of the plaintiff and her residence are not stated in the notice, (2) that the cause of action arose when the Revenue Tribunal dismissed the appeal of the plaintiff and the notice under section 80 C.P.C. was before the date of cause of action and (3) that in the plaint the relief was claimed against Commissioner's order only, but no relief was claimed with regard to the order of the Revenue Tribunal.

4. When a suit is filed in a Court and it is necessary in such a suit to prove that a notice has been given under section C.P.C., it is necessary for the Court to see what the plaint refers to and to make sure that the requisite notice under section 80 C.P.C. has been given with reference to the plaint as is actually filed. In this case, the plaint was filed for a declaration that the order of the Commissioner was ultra vires. It is necessary for the plaintiff to give a notice with reference to this relief. It is not for the Court to say that the suit should have been filed for a different relief viz., for setting aside the order of the Revenue Tribunal and that therefore the notice should have been given with reference to the order of the Revenue Tribunal.

5. In the plaint the date of the cause of action is stated as the date of the order of the Commissioner and as the plaint has reference only to this order, the lower Court is not right in saying that the cause of action arose when the Revenue Tribunal confirmed the Commissioner's Order. It is

for the plaintiff to decide whether he would be satisfied with a delcaration that the order of the Commissioner was ultra vires. If the plaintiffm would be satisfied with such a declaration it is sufficient if she has given a notice with reference to the order of the Commissioner.

6. As regards the omission of the plaintiff to mention her age and place of residence in the plaint, the lower Court has referred to the decision of the Privy Council in Bhagchand Dagadusa v. Secretary of State for India in Council (54 Indian Appeals 338) and has observed that the provisions of section 80 C.P.C. should be strictly complied with. What their Lordships of the Privy Council held in that case was that the provisions contained in section 80 C.P.C. relating to two month's notice should be strictly complied with. The observations contained in a judgment of a High Court of the Privy Council should not necessarily be applied beyond what is necessary for the determination of the question before them.

7. In the notice given under sectioj 80 C.P.C. to the Collector, which is at Exh.16 it is stated that the required particulars were all stated in the rough draft of the plaint which was attached to the notice. The notice was given by a pleader on behalf of his client Mrs.Khatizabi alias Bibijan Kom Abdul Majid Shaikh. In the draft of the plaint which ttached, unfortunately the age of the plaintiff was not sanctioned, nor the village of the her residence. The plaintiff is described thus -

> Mr.sKharizabi alias Bibijan Kom Abdul Majid Shaikh, age , caste Muslim, Occupation Agriculture,. of -

But in the body of the draft copy of the plaint it

was stated that R.S.No.329 of the village Hommardi in Taluka Karjgi, District Dharwar, was granted to the plaintiff and that she took possession of the same after executing an agreement in Form F given in the Land Revenue Code. It was also stated that the plaintiff has been maiing vahiwat of the land as full owner and occupant as per terms of the agreement.

8. Although, unfortunately, the plaintiff's residence is not mentioned at the head of the plaint or in the notice her village of residence can be inferred from the draft copy of the plaint. Moreover when the notice has been given by the plaintiff's pleader whose address is mentioned in the notice, the address of the plaintiff can be taken to be 'care of' her pwn pleader whose address has been given. Failure to explicitely state the plff's residence in the notice is not such a failure to comply with the requirements of section 80 C.PC. as to dismiss her from filing a suit.

9. The plaintiff's age has not unfortunately been stated either in the notice or in the draft copy of the plaint attached to the notice. But as it is stated in the plaint that she had executed an agreement with the Collector, I am not inclined to attach undue importance to this omission. It has not been held in Bhagchand v. Secretary of State (54 Indian Appeals 338) that section 80 C.P.C. should be strictly construed even as regards the requirement that the age if the plaintiff should be mentioned in the notice.

10. I therefore allow the appeal and set aside the order of the lower Court and order that it should proceed with the further hearing of the plaintiff's suit. There will be no order as to costs of the appeal.

26th Feb '51.

Sd/- V.B.Raju,

District Judge.

41 9/5

19th March 1957

Superintendent

Record Keeper

Copy was ~~sent by post~~ delivered on 21st March 1957

Record Keeper

562

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(A.E.-ga-a-ay)

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Sd/- G.K. Ramaka
Advocate

Sd/ V.B. Raju
17-3-57
Advocate.

Sd/- V.G. Jamkhandi
Advocate

Copy ready
Compared by

Clerk of the Court

99/45

Suits
Dharwar.

For a declaration that the order of the Commissioner, Southern Division, No. LNDAP 1975, dated the 28th August 1947, cancelling the grant of the suit land made by the Collector of Dharwar to the plaintiff is illegal and ultra vires and for a permanent injunction restraini Government from enforcing that order.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 7813

Bombay Castle, 17th May 1951.

Read Government Resolution, Legal Department, No.14426, dated 12th December 1949.

Letter from the District Government Pleader, Dharwar, No.288, dated the 28th March 1951, stating that t appeal noted in the margin was decided b the District Judge, Dharwar, on the 26th February 1951, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Hubli.
Civil Suit No. 254 of 1947.

Mrs. Khatizabai @ Bibijan kom) Plain-
Abdul Majid Shaikh) tiff;
Vs.
The Province of Bombay = Defendant
Claim Rs. 65/-

> "I therefore allow the appeal and set aside the order of the lower Court and order that it should proceed with the further hearing of the plaintiff's suit. There will be no order as to costs of the appeal."

and forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the appeal recorded.

By order of the Governor of Bombay,

R. T. Katarki,
original Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Dharwar,
The Secretary, Bombay Revenue Tribunal,
TheDistrict Government Pleader, Dharwar.

8KC. 11.5.51. Submitted for Signature

Issued 17/5

recd. on 17/5

Submitted after issue

File : S. Dharwar 2/49

Dy. Secy. (S)

Dharwar 2/49

47 1/2

Suits
Dharwar.

For a declaration that the order of the Commissioner, Southern Division, No. LNDAP 1975, dated the 29th August 1947, cancelling the grant of the suit land made by the Collector of Dharwar to the plaintiff is illegal and ultra vires and for a permanent injunction restraining Government from enforcing that order.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1024
Bombay Castle, 19th June 1952.

Slip A Read Government Resolution, Legal Department, No. 7813 dated the 17th May 1951.

Slip B Letter from the Sub-Government Pleader, Hubli, No. 20 dated the 9th February 1952, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Hubli, on the 8th February 1952, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Hubli.	
Civil Suit No. 254 of 1947.	
Mr. Khatizabai @ Bibijan Kom) Abdul Majid Shaikh)	Plaintiff;
Vs.	
The Province of Bombay - Defendant	
Claim Rs. 65/-	

"The suit is dismissed. The plaintiff shall pay the costs of the defendant and she should bear her own."

Slip C Letter from the Sub-Government Pleader, Hubli, No. nil dated the 14th March 1952, forwarding uncertified copy of the judgment.

Endorsement from the Collector of Dharwar, No. L.G.L. S.R. 567, dated the 24th April 1952 forwarding copy of letter from the District Government Pleader, Dharwar, No. 267, dated the 12th April 1952 stating that the plaintiff in the suit noted in the margin has filed an appeal No. 89 of 1952 and requesting sanction to its defence.

RESOLUTION :- (i) The result of the suit is recorded.

(ii) Sanction is accorded to the defence of the appeal No. 89 of 1952 in the Court of the District Judge, Dharwar, on the lines of the brief accompanying Government Resolution, Legal Department, No. 2162, dated the 23rd February 1948 and the favourable grounds contained in the judgment

of the Civil Judge (Senior Division), dated the 8th February 1952.

49

By order of the Governor of Bombay,

original R. T. Katarki

(R.T. Katarki),
Deputy Secretary to Government.

To.

The Revenue Department,
The Collector of Dharwar,
The Secretary, Bombay Revenue Tribunal,
The District Government Pleader, Dharwar.

Issued
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Submitted for Sd/-
AC 7/9/6
D.S. (Civil)

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This is a Report from the D.G.P. Dharwar recommending that a Second Appeal may be filed in the High Court against the decision of the Assistant Judge in the above appeal. The facts leading to the appeal are these.

Revision Survey No 329 of the village Hommaraddi formerly contained a tank. That tank had been declared a Second Class Irrigatikn work in 1921. But later on it was found that the tank was filled up with silt and that it could not hold water any more. The tank land was therefore given to the plff for cultivation for a period of one year from 1942. In 1944 the Tank was deleted from the list of Second Class Irrigation Work. Thereafter it was treated as waste land vesting in Govt under Sect 37 Land Revenue Code. The plff was allowed to cultivate the land on annual leases till 1945. Then the plff applied to the Collector that the land may be permanently granted to her . The Collector passed an order on 10-4-1945 granting the land to her on new and restricted tenure on payment of Rs 220 as Occupancy price . The Collector did not hold any auction of the land. The plff then executed a Kabulayat in Form F., and she was put in possession.

When the grant made by the Collevtor came to the notice of the Commissioner he thought that the grant made without holding an auction was improper. There was also demand for that land from the people of the village for other purposes. The Commissioner therefore set aside the Collectors order and cancelled the grant. The plff then filed the present suit for a declaration that the Commissioners orders were illegal.

The Govt contended that the land was valuable and it should not have been disposed of without holding an auction, as directed in the standing orders contained in the Govt Resolution issued from

time to time. The Commissioner had every authority to exercise his pwers under Sect 211 Land Revenue Code and to set aside the grant made by the Collector .

The Trial Court upheld the contentions raised by the Govt. and dismissed the Suit. But in appeal the learned Assistant Judge reversed the decision and held that the Commissioner had no power to act under Sect 211 after the plff had executed a Kabulayat and obtained possession. He relied on the decision of the High Court in Solankar's case (A.I.R. 1953 Bombay 300) . He therefore decreed the plff's claim.

The D.G.P. has recommended a second appeal to the High Court. That recommendation may be accepted. After the decision in Solankar's case the same point came up again before a Division Bench in Letters Patent Appeal No 4 -1951. In that case Bavdekar and Chainani JJ reviewed all the previous cases on the point and held that the decision of the Privy Council in Noolkar's case (36 Bom.L.R. 242) was binding on the Court, and in that decision it was held that the Govt had unrestricted powers under Sect 211 to revise the Orders and Proceedings of Suvbordinate Revenue Officers. The fact that a Kabulayat had been passed would make no difference as the Kabulayat itself is always passed subject to the provisions of the Land Revenue Code.

The decision of the learned Asst. Judge is not correct in view of the decision of the High Court in Letters Patent Appeal No. 4-1952. This is therefore a proper case for going to the High Court in Second Appeal. The G.P. High Court may be instructed to file a second appeal against the decision of the Assistant Judge .

Sec 231

R.L.A.

Secy. R.D. 28.1.54

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
28 JAN 1954

x with file
S. Dwr. 2/49
No. 1907-Est.
28-1-54

157

Suits:
Dharwar.

For a declaration that the order of the Commissioner, Southern Division, No. L.N.D.A.P.1475 dated the 28th August 1947, cancelling the grant of the suit land made by the Collector of Dharwar to the plaintiff is illegal and ultra vires and for a permanent injunction restraining Government from enforcing that order.

Government of Bombay,
Legal Department,
Resolution No. 19563/E
Sachivalaya, Bombay,
5th September, 1955.

Read Government Resolution, Legal Department No. 10244 dated the 19th June 1952.

Letter from the District Government Pleader, Dharwar No. 1001 dated the 17th December 1953 stating that the Civil Appeal filed in the suit noted in the margin was decided by the Assistant Judge, Dharwar, on 30th October 1953 when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Hubli.
Civil Suit No. 254 of 1947.

Mrs. Khatizabai alias Bibijan kom Abdul Majid Shaikh .. Plaintiff;

versus

The Province of Bombay .. .... Defendant.

" The appeal is allowed with costs throughout. The decree of the lower court is set aside and the Defendant is restrined from interfering with the possession of the Plaintiff contrary to the terms of the agreement exhibit 42 dated 28th November 1945."

Letter from the District Government Pleader, No. 1001 dated the 17th December 1953 recommending the institution of Second appeal.

Resolution: Sanction is accorded to the institution of Second Appeal in the High Court of Judicature at Bombay against the decision of the Assistant Judge, Dharwar, dated the 30th October 1953 on the lines of the brief accompanying Government Resolution, Legal Department, No. 2162 dated the 23rd February 1949.

By order and in the name of the Governor of Bombay,

3/9

(D. P. Shikhare,)
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Dharwar,
The Government Pleader, High Court, Bombay (with a copy of print received under his letter No. 7676 dated 26-8-1955),
The Secretary Bombay, Revenue Tribunal,
The District Government Pleader, Dharwar,
The Sub-Government Pleader, Hubli.

Submitted

2/ Flein S.Dharwar 2/49

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S.Dharwar 2/49

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Received on
Registered on
Decided on
Duration

In the Court of the Assistant ....., ...,

At Dharwar.

Civil Appeal No. 89 of 1952 from the Judgment and Decree in Long Cause Civil Suit No. 254 of 1947, of the Court of the Civil Judge, Senior Division, at Hubli.

(Shri B.A.Chaugule).

Pleaders

Shri N.K.Dixit. Mrs. Khatijabi alias Bibijan Kom Abdul Majid Shaikh of Hommaradi, now at Dharwar. .....Appellant..... (Original Plaintiff).

Vs.

Government Pleader. The State of Bombay. .....Respondent ..... (Original Defendant).

Claim-Rs.

Judgment.

This is an appeal by the Plaintiff from the Judgment and decree of the Learned Civil Judge, Senior Division, Hubli dated 8-2-1952 dismissing Long Cause Civil Suit No. 254 of 1947.

2. The facts of the case which are mostly undisputed are as follows :-

The Government of Bombay, in persuance of a policy that in all districts a sustematic attempt should be made to give out all waste lands for profitable cultivation by land lords, agriculturists and those who did not have enough land, passed a resolution No.366/33 dated 6th July 1937 empowering the Collectors dispose of such lands within their jurisdiction . On 1-6-1942 the Plaintiff -

the plaintiff applied to the Mamlatdar Haveri, for a grant of R.S.No.329 which was an old tank site for the purpose of cultivation as she had no other land. The land was accordingly given on lease and the Plaintiff brought it under cultivation in the year 1942-1943 by raising various kinds of crops. On 25-2-1943 she again applied for 1 year's lease. The authorities concerned recommended a lease for 5 years and it is not disputed that the land was again leased for 5 years. In the mean-time some villagers objected to the lease on the ground that the land was in irrigation tank, and should not be leased. On 18-8-1943 the Mamlatdar visited the place and fomndthat the whole of the survey Number had been brought under plough except for about 3 Acres out of about 22 acres. It was clear that the tank which was classified as a second class irrigation tank was useless as an irrigation tank, and therefore, steps were taken by the Government to exclude it from the application of the Bombay Irrigation Act of 1879. It was by Government Notification dated 28-7-1921 that the tank had been declared to be a second class irrigation work. On 2-2-1944, as a preliminary to exclude it from the application of the Act, a notification was issued by the Government for the information of all persons likely to be affected calling for objections to the proposed exclusion. Finally on 24-8-1944 the Government notified its decision to exclude the tank, with the result that as from that date the tank's site vested in Government as Government waste land. This decision had been taken after considerin all relevant decision had been taken after considering all relevant objections and it is not disputed that from 24-8-1944 the tank ceased to be an irrigation tank. On 5-11-1944 the Collector was moved by the Plaintiff for a permanent grant of the land which was in her possession as a lessee, and the following order was passed by the Collector on 4-10-1945 :-

> S.No.329 of Hommaradi, measuring 21 Acres and 37 Gunthas has been leased out for the last 3-4 seasons to Mrs.Khatijabi Kom Abdul-Majidsab Shaikh of Haveri. The land was lying fallow; and she has brought it under plough at an expenditure of about Rs.1,500/-. In view of the orders contained in G.R.R.D.No.366/33 dated

- 3 -

/ 57

" 6-7-1937, I grant the S.No. to Mrs.Shaikh on restricted tenure on payment of P.V. of Rs.220/- and Rs.2/- being the value of the tree standing on the land.(Exh.41)."

In pursuance of this order the amount was paid by the plaintiff in the treasu y and on 22-11-1945 an agreement in Form 'F' was taken from her as per Exh.42. Mutation was accordingly made in the name of the plaintiff on 2-3-1946.

4. Subsequently, it appears, the higher authorities were moved by some interested people and on 28-8-1947, the Commissioner, S.D., passed the following order :-

S.No.329 of Hemmardi measuring 21 acres and 37 gunthas has been granted by the Collector to Mrs.Khatijabi Kom Andil Majidsab Shaikh of Haveri on payment of occupancy price equal to the panch valuation, viz., Rs.220/- and Rs.2/s being the value of the tree standing on the land. This is in contravention of the standing orders of Govern,e t regarding the disposal of land by auction.

2. The villagers of Hem ardi also object to the disposal of the land which is a tank bed on the ground that they have a right to irrigate their lands with the water of the tank.

3. In the circumstances the grant made by the Collector is hereby cancelled under section 211 Land Revenue Code."

The plaintiff preferred an appeal to the Revenue Tribunal but the same was rejected on the ground of want of jurisdiction. The Tribunal's order which is at Exh.40 shows that the Commissioner had merely carried out the orders of the Government.

5. As the grant was cancelled and the plaintiff was likely to be evicted she brought the present suit after giving the necessary notice for a declaration that the order of the Commissioner dated 28-8-1947 was altra vires and not binding on the plaintiff and for a permanent injunction against the Province of Bombay restraining it permanently from carrying into effect the said order.

6. A number of contentions were taken on behalf of the State. But those which are relevant for the purpose of the appeal are that the grant made by the Collector was without jurisdiction, and that the Commissioner had competantly reversed the order acting under section 211 of the Land Revenue Code.

7. The learned Civil Judge held that the Collector had no authority to grant any land without the previous sanction of the Commissioner, and therefore, the grant made ti the plaintiff was not lwgal. He also held that the Commissioner had full authori under section 211 Land Revenue Code to revise the order of the Collector.

The issues for determination, therefore, are :-

1. Whether the order granting the land to the plaintiff was invalid ?
2. Whether the order was liable to be revised by the Commissioner ?
3. If so, whether the order of the Commissioner cancelling the agreement is legal and valid

My findings are :-

1). No; 2) Yes; 3) No.

R e a s o n s

8. The order of the Collector making the grant on 4-10-1945 purports to be passed by him under G.R.R.D. No.366/33 dated 6th July 1937.. The relevant Government Resolution is produced at Exh.7 The Resolution in para 7 grants authority to the Collector to make final disposal of land in accordance with 'these orders' Para 1 points out that Government desire that in all districts a systemati c sttempt should be made to give all waste lands which are not required for village grazing or other public

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capable of being profitably cultivated, in order to provide a livelihood to agriculturists who have ni land or whose land is less than an economic holding. Para 4 divides waste lands into 4 catageries, (d) being relevant in this. The rule about disposal of such land for cultivation is as follows -

> As regards land falling in catagory (d) disposal for cultivation in the present monsoon will be limited to clear cases about which there is no doibt. But Government hope that it will be possible to make substantial grants in time for cultivation during the monsoon of 1938-39. In rare cases, where waste-lands were exceptionally valuable, such a land under the command of canals or near the villages, it should be earmarked for disposal by auction on a favourable occasion. A statement of lands so reserved for further disposal in each district should be submitted to Government. The statement sha___ show the area and estimated value of the lands in question. Other land in this catagory should be disposed of as soon as possible accor ding to the following principles :-
>
> (1). If it is now being leased out, it should ordinarily be offered forst to the lessee, provided he is a good agriculturist and he has cultivated himself continuously for at least two cultivating seasons.
>
> (2) If it is not leaded out at present, it should be given preferably to a resident of th village in which it is situated who is likely to make a good cultivator selected by an

officer of not lower rank than a Mahalkari, etc. etc.

The land should be disposed of on the impartible and inalienable tenure. When the circumstances justify such a concession , land may be given out free of occupancy price and, if necessary, free of assessment for the first few years."

9. There is no dispute that by Government Notification issued in 1944 the bed of the Tank which had gradually filled up became waste land vested in Government under section 37 of the Bombay Land Revenue Code. The section provides for the disposal of such land by t e Collector and the relevant provisions is as follows :-

" It shall be lawful for the Collectir subject to the orders of the Commis ioner, to dispose of them in such manne as he may deem fit or as may be authorised by general rules sanctioned by Government."

The plaintiff was a previous lessee of the land for 3 or 4 years seasons and, therefore, the Collector was bound ordinarily to grant the land to the plaintiff. Therefore, it is easy to see that the order of the Collector granting the land under that particular resolution, so far as it goes, is unexceptionable.

10. The Commissioner, however, gave two reasons for cancel ing the grant - one is that it was in contravention of the standing orders the Government regarding the disposal of land by auction. The second was that the villagers of Hammardi also object to the disposal of the land which is a tank bed on the ground that they had a right to irrigate the land with the water of the tank. So far as the second reason us concerned, it us not sought to be supported before, We have already seen that the tank had gradually filled up and was useless as an irrigation tank and had been brought under the plough in 1942 by the plaintiff. The Collector himself has noticed in his order that the plaintiff must have incurred an expenditure of about 1500/- Rs. Steps were taken to exclude the tank from the application of the Irrigation Act, and it was by a Government Notification issued in 1944 that the tank ceased to be an irrigation tank, and became waste land vested in the

Government. The Commissioner merely refers to the objections of the villagers, but has not stated whether the objections were justified or not. It comes only to this that the Government was prepared to cancel an agreement with the plaintiff because some villagers objected without any good ground for the objections. It is, therefore, only right that this second reason given by the Commissioner is not sought to be supported before me in argument.

11. As regards the first reason namely that there was a contravention of the standing orders of the Government, no standing orders apart from Exhs79 pen produced in this case. The Collector has specifically referred to the Government Resoluti dated 6th July 1937 and has justified the grant under that resolution. The Commissioner in the absence of any other orders on the point must be presumed to have referred to this resolution only as a standing order. The learned Assistant Government Pleader points out that lands under category (d) para (4) fall into two divisions. One consists of 'rare cases' where waste land is exceptionally valuable such as land under the command of canals or near large villages which should be earmarked for disposal by auction on a favourable occasion. It is suggested that, perhaps, the Commissioner refers to this type of rare cases which require that the waste land concerned should be disposed of by auction. If the reference to standing orders made by the Commissioner is to this para of the Government Resolution dated 6th July, 1947, I am bound to say that there is no evidence at all to show that the land in this case comes under the category of 'rare cases'. Indeed, evidence has been led how to show that the property is worth Rs.10,000/-. But the Collector's own order

shows that the panch valuation of the waste land was Rs.220/-. I dont think this can be regarded as land of exceptional value'. Moreover the rare cases specified in that order are to be dealt with in a particular manner. A statement of such lands ought to be submitted to Government- There is no evidence at all that the tank was included in a statement of reserved lands submitted to Government- Therefore, it is clear that the suit land dies not fall in the category of 'rare cases', but of ordinary cases which the Collector could dispose of in his own authority.

12. It is, hencen evident that both these meas ns given by the Commissioner do not appear to be consistent with the general orders passed by the Government, and, therefore, it must be held that the grant by the Collectir in pursuance of the Government Resolution dated 6th June 1937 is xx a valid grant.

13. The learned Civil Judge seems to have thought that the previous sanction of the Commissioner was necessary for such a grant, and for this purpose he has relied on the Secretary of State for India v. Anant, 36 B.L.R.242. In my opinion the learned Civil Judge has erred in holding that the Collector has no aithority to grant any land without the previous sanction of the Commissioner. In that case the grant was made under rule 19 of the Land Revenue Rules (corresponding to rule 39 of the present rules), which says that where S.Nos.may be given at reduced assessment, it would be lawful for the Collector (with the previous sanction of the Commissioner in case where the assessment on the land included in the total grant exceeds Rs.100) to grant the survey number free or at a reduced assessment. In the particular case with which the Privy Council was concerned, the assessment of lands included in the grant exceeded Rs.100/- and there was no previous sanction of the Commissioner. Hence the grant was held to be invalid. The decision is not, therefore, an authority for holding that in other cases also the previous sanction of the Commissioner is required. In the present case the assessment

Commissioner's order is ultra vires. Even assuming that he can reverse the order of the Collector under section 211 of t e Land Revenue Code it is now established that he cannot cancel an agreement made by the Collector with third parties. See Government of Bombay Vs. Ahmedabad Mills A.I.R. 1944 Bombay 244. The Government of Bombay v. Mathurdas A.I.R. 1942 Bombay 254, and Sambhaji v. The Mamlatdar of Baramati, A.I.R.1953 Bombay 3[illegible] These cases hold that section 211 of the Land Revenue Code does not apply to documents embodying terms and conditions agreed to between the Government and the occupants. As pointed out in the last named case it was not competent to Government to modify the terms of the Sanad or an agreement in Form F(1) if it embodied certain terms and condition agreed to between the Government and the occupants. Rule 37 of the Land Revenue [illegible] Rules provides for such agreements and it cannot be disputed that Exh.42 is such an agreement in Form F. It, therefore, follows that this agreement shall bind parties thereto whether we regard the Commissio order legal or not. The learned Assistant Government Pleader argued that if the order passed by the Collector is reversed the agreement based upon it must automatically fall to the groubd. It is exactly this contention which had been repelled in the above cases, and, therefore, that argument is no longer open.

16. As the agreement is operative and binding on the parties and t e plaintiff is in possession under the agreement the defendant will have no right to take possess on of the land from the plaintiff contrary to the terms of the agreement. The appeal, therefore, succeeds and the order of the lower Court will have to be reversed.

O r d e r.

17. The appeal is allowed with costs throughout. The decree of the lower Court is set aside and the defendant is restrained from interfering with the possession of the plaintiff contrary to the terms of the agreement Exh.42 dated 28-11-1945.

Sd/- D.G.Palekar,

Dated 30th October, 1953. Assistant Judge, Dharwar.

S. D Karwar 2/11/53